

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CF2954
	EEOC NO.: 21BA81786
ANDRES SANTIAGO,)	ALS NO.: 09-0387
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee Freeman and Yonnie Stroger, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF2954, Andres Santiago, ("Petitioner"), and the Board of Education of the City of Chicago ("Employer"); and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request, and the Petitioner's Reply; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. On April 21, 2008, the Petitioner filed a charge of discrimination with the Respondent alleging between March 2008 and April 21, 2008, the Employer harassed him because of his sex, male (Count A), and in retaliation for having filed a previous charge of discrimination (Count B), subjected him to unequal terms and conditions of employment because of his sex, male (Count C), and in retaliation for having filed a previous charge of discrimination (Count D), and issued him a written reprimand because of his sex, male (Count E) and in retaliation for having filed a previous charge of discrimination (Count F), in

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

violation of Sections 2-102(A) and 6-101(A) of the Illinois Human Rights Act (“the Act”).

2. On February 24, 2009, the Respondent dismissed the Petitioner’s charge for lack of substantial evidence. On March 18, 2009, the Petitioner filed a timely request for review. On April 17, 2009, the Respondent filed its response. On April 20, 2009, the Commission entered an order vacating the dismissal of the Petitioner’s charge and remanded the charge to the Respondent for further investigation. On June 18, 2009, the Respondent again dismissed the Petitioner’s charge for lack of substantial evidence. On July 22, 2009, the Petitioner filed this timely Request.
3. The Petitioner was hired by the Employer as a Probationary Assigned Teacher (“PAT”). The Petitioner was assigned to Lloyd Elementary School for the 2007-2008 school year as a Writing Language Arts teacher and disciplinarian.
4. Dr. Miryam Assaf-Keller (“Assaf-Keller”) (*sex: female*) was the Principal of Lloyd Elementary, and Rose Lechuga-Rivera (“Lechuga-Rivera”) (*sex: female*) was the Assistant Principal.
5. On or about February 26, 2008, the Petitioner asked Assaf-Keller to mentor him for a teacher certification “Type 75” program which could have advanced his career. It was within Assaf- Keller’s discretion to mentor any probationary teacher for certification. Assaf-Keller declined to mentor the Petitioner because he had failed to cooperate with her on several occasions including but not limited to his refusal to sign documents and memoranda of their meetings; and based upon her less than favorable impressions of the Petitioner’s pedagogical style gleaned from her classroom observations of him on February 4, 2008, and February 22, 2008.
6. On March 12, 2008, the Petitioner filed a charge of discrimination with the Respondent alleging sex discrimination (“the March 2008 Charge”). The March 2008 Charge was served on the Employer on or about March 21, 2008.
7. The Petitioner alleges between March 2008 and April 21, 2008, the Employer harassed Count A and retaliated Count B against him when Assaf-Keller sent him memos advising him to address minor incidents, subjected him to close monitoring, told him to prepare his lesson plans on time, even though he claims he had always prepared his lesson plans on time, coerced his colleagues into making false allegations against him, and when Lechuga-Rivera, the Assistant Principal, told him to stop socializing and to report to class.
8. The Petitioner alleges the Employer subjected him to unequal terms and conditions of employment because of his sex, Count C , and retaliated against him, Count D because he had filed the March 2008 Charge when the Employer assigned him to a room when no children were present, did not permit him to

have a conference with the parents of the students that he tutored, and when Assaf-Keller declined to mentor him for the “Type 75” program.

10. The Petitioner alleges Assaf-Keller issued him a written reprimand on April 1, 2008, because of his sex, Counts E and in retaliation for his having filed a previous charge of discrimination, Count F.
11. The reprimand referenced in Count E is in the form of an email sent to the Petitioner by Assaf-Keller after the Petitioner had been observed performing acrobatic flips in the hallway in front of the school library. Assaf-Keller stated in the e-mail: “I kindly remind you to refrain from performing such acts on school premises.”

The Commission’s review of the Respondent’s investigation file leads it to conclude the Respondent properly dismissed all counts of the Petitioner’s charge for lack of substantial evidence. In order to establish a *prima facie* case of actionable harassment based on sex, the Petitioner must present substantial evidence that he was subjected to harassment sufficiently severe to constitute a term and condition of his employment, and that the harassment would not have occurred but for his gender. See In the Matter of Jerry Lever and Wal-Mart Stores, 2001 WL 474082, at *5 (1998SF0551, January 2, 2001), *citing Hill and Peabody Coal Co.*, ____ Ill. HRC Rep. ____ (1991SF0123, June 26, 1996).

In order to prove a *prima facie* case of retaliation, there must be evidence that: 1) the Petitioner engaged in a protected activity; 2) the Employer took an adverse action against the Petitioner, and 3) there was a causal nexus between the protected activity and the adverse action. Carter Coal Co. v. Human Rights Commission, 261 ILL. APP. 3d 1, 7, 633 N.E.2d 202 (5th Dist. 1994).

There is no substantial evidence to support Counts A and B because in the first instance, none of the incidents alleged rise to the level of harassment. Requesting the Petitioner to timely complete his lesson plans, to cease socializing and to report to his classroom, and to complete other duties associated with his position does not constitute harassment within the meaning of the Illinois Human Rights Act. Even if these incidents could be construed as harassing conduct, there is no evidence this conduct was motivated by the Petitioner’s sex.

The Count B charge of retaliation fails because there is no evidence the Respondent took an adverse action against the Petitioner. Asking the Petitioner to perform his job duties and responsibilities does not constitute “adverse action.”

As to Counts C and D, the Petitioner failed to establish a *prima facie* case that he was subjected to unequal terms and conditions of employment because there is no substantial evidence of similarly situated employees outside his

protected classes who were treated more favorably under similar circumstances. See Pettis and McDonald's Corp., 2001 WL 34778858, Charge No. 1991CF2143, ALS. No. 10754, (April 9, 2001), *citing to* Moore and Beatrice Food Co., 40 Ill.HRC Rep. 330 (1988).

The Petitioner's Count D retaliation claim fails because there is no substantial evidence of an adverse action. There is also no evidence in the file which demonstrates the Petitioner was "detrimentally affected" in any way by the Employee's actions. See Miller and Local #75, ___ILL.HRC Rep.___, Charge No. 1986CF3312.

Even if Assaf-Keller's refusal to mentor the Petitioner could be construed as adverse action, there is no substantial evidence of retaliation because there is no causal nexus between the alleged adverse action, Assaf-Keller's refusal to mentor the Petitioner and the filing of the March 2008 Charge. The alleged adverse action, took place in February 2008, *before* the Petitioner engaged in the protected activity of filing the charge in March 2008. At minimum, there must be evidence that the adverse action took place *after* the protected activity in order to allege retaliation under the Act.

Finally, as to Counts E and F, the Commission finds no support for the Petitioner's contention that the April 1, 2008, e-mail constituted a reprimand or any type of adverse action because there is no proof the Petitioner was detrimentally affected by the e-mail reminder. There is also no evidence the Petitioner was treated less favorably than teachers who were not in his protected classes.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show the Respondent's dismissal of his charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of Petitioner's charge is hereby **SUSTAINED**.

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In the Matter of the Request for Review by: Andres Santiago, ALS No. 09-0387

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and the Board of Education of the City of Chicago as appellees, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 13th day of January 2010.

Commissioner David Chang

Commissioner Marylee Freeman

Commissioner Yonnie Stroger